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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. .....

ATLAS PERRY, et als.,
Respondents,

v.

LAWRENCE COUNTY ELECTION COMMISSION, et als.,
Petitioner.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petitioner, J. P. Kimbrell, seeks a review of the final judgment of the Tennessee Supreme Court filed January 12, 1967, not yet officially reported but unofficially reported in 411 S. W. 2nd 538, and included in the appendix to the petition for certiorari. Petition to rehear was denied by the Tennessee Supreme Court on March 1, 1967, and is unofficially reported on pages 539-40 of the above citation.

JURISDICTION.

Petitioner seeks to invoke jurisdiction of this Honorable Court pursuant to Section 1254 (1), U. S. C. A. Although this section pertains to certiorari to the Federal Courts of

Appeal, it is conceded that in a proper case this Court would take jurisdiction on petition for certiorari to a state court if a substantial federal question deemed "special and important" were involved, but respondents respectfully insist that at no time in the State proceeding, either in the trial or appellate courts, did petitioner raise or present for determination a federal constitutional question. Petitioner's allegation to the effect that the Supreme Court of Tennessee withheld and denied to him the rights and privileges guaranteed to him by the Constitution of Tennessee, by Section 1 of the Fourteenth Amendment to the Constitution of the United States and by Article IV, Section 4 of the same document, would appear to be frivolous and without substance in the light of the true legal issues involved in this cause, which were, does Section 12, Chapter 55 of the Private Acts of Tennessee for the year 1943 contravene any provision of the Tennessee Constitution or general statutes of the State of Tennessee?

BRIEF AND ARGUMENT.

Petitioner seeks to invoke jurisdiction of this Honorable Court upon the ground that the decision of the court of last resort of the State of Tennessee in holding Section 12, Chapter 55 of the Private Acts of Tennessee for the year 1943 valid and compatible with the Constitution and Statutes of the State of Tennessee, violated his rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States. Petitioner also claims his rights and privileges under Article 4, Section 4 of the Federal Constitution were violated. Respondents respectfully contend that at no time or step in the State proceeding was there a Federal question presented for consideration and though Petitioner alleges that his federal rights were denied him for the first time in his petition for certiorari, it is difficult indeed to see how a decision of the Tennessee Supreme Court passing on a provision of the Constitution and a Statute of the State of Tennessee in accordance with its regularly established procedure, could have deprived petitioner, who was from the very inception of the cause, represented by competent, experienced and able lawyers, of due process or equal protection of law by simply sustaining the validity and constitutionality of a Statute of the State of Tennessee. It is even more difficult to comprehend Petitioner's contention that said decision violated the federal constitutional guaranty to the States of the Union against invasion, domestic violence and interference with its republican form of government as set forth in Article 4, Section 4 of the United States Constitution. Therefore respondents insist that no substantial federal constitutional question is involved in this cause.

In his petition to rehear, Appendix, page (4a), petitioner succinctly states the issues involved in this cause as follows:

(1) Is the Private Act unconstitutional as being in violation of Article VI, Section 4 of the Constitution of

Tennessee, which sets out the qualifications of judges of inferior courts, and,

(2) Is the Private Act unconstitutional as being in violation of Article XI, Section 8 of the Constitution of Tennessee, which prohibits special legislation?

The Supreme Court of Tennessee decided both questions adversely to petitioner, saying:

> "This case is controlled by the holding in **LeFever v. Ware**, 211 Tenn. 393 S. W. 2nd 44 (1963), wherein it was said: Therefore, we believe that the standards or requirements as are now in Section 4 of Article 6 of the Constitution are minimum only and that the Legislature possesses the necessary power and authority to add to these qualifications provided it does so on a reasonable basis, * * * 211 Tenn. 409, 365 S. W. 2nd 51."

As to the second state constitutional question raised by petitioner, the Tennessee Supreme Court in its decision on the petition to rehear quoting from LeFever, supra, said:

> "We do not believe that either of said Acts (the private act and a public act) is violative of Article 11, Section 8 which prohibits class legislation. Under the Acts every person who is authorized to practice or who may hereafter be authorized to practice in the Courts of Tennessee is eligible to serve as a Judge. There is nothing unreasonable or arbitrary about this classification of said Section 8 of Article 11 which prohibits only those classifications which are unreasonable and arbitrary." 211 Tenn. 408, 365 S. W. 2nd 51.

Article VI, Section 1 (Volume 1, TCA, p. 519) of the Constitution of Tennessee provides that the judicial power of the State of Tennessee shall be vested on one Supreme Court and in such Circuit, Chancery and other inferior courts as the Legislature shall from time to time ordain

and establish. Such an inferior court was established by the Tennessee Legislature in the enactment of Chapter 55 of the Acts of 1943, creating the General Sessions Court of Lawrence County, Tennessee. This act in addition to the constitutional requirements provided that the Judge of such court be licensed to practice law in Tennessee. Now the sole question raised by petitioner was that this act was unconstitutional as being in violation of Article VI, Section 4 of the Constitution of Tennessee as an attempt to enlarge the qualifications of said Judge above those provided in said constitutional provision, which only provided that such Judge be thirty years of age, a resident of Tennessee for 5 years and of the circuit or district one year. Upon consideration of these issues the Supreme Court of Tennessee held the Act valid and constitutional and no federal question was raised or at anytime considered by the Court.

Petitioner mentions the case **Kivett v. Mason**, 185 Tenn. 558, 206 S. W. 2nd 789, wherein the Supreme Court of Tennessee rightly held that a Private Act requiring the County Judge of Claiborne County to be a "practicing attorney" was unreasonable and therefore invalid. In this situation (Kivett v. Mason, supra) the Tennessee Supreme Court was not confronted with the question of whether or not a statutory provision simply requiring that the Judge be a "licensed lawyer" would be reasonable and therefore valid. However in the later case of **LeFever v. Ware**, 211 Tenn. 393, 365 S. W. 2nd 44, the Court did have this question and held that such a provision was reasonable and therefore constitutional.

It is a rule of almost universal application that federal questions not raised in the state court cannot be reviewed in the United States Supreme Court. As this Court stated in **Penn. R. R. Co. v. Illinois Brick Co.**, 56 S. Ct. 556, 297 U. S. 447:

> "As the highest Court of the State declined to consider them because not raised in the Circuit Court

or presented to it in accordance with practice that unquestionably was well established and reasonable, this Court is without jurisdiction to consider either of them."

To the same effect is the holding in **Hanson v. Denckla,** 78 S. Ct. 1228; 357 U. S. 235. Moreover petitioner contends in his petition herein that the Tennessee Supreme Court was "much in error" in basing its decision on LeFever instead of his contention of the law as announced in prior authorities. In this connection this Court said at page 454 in the case of **Brinkerhoff-Farris Trust & Savings Co. v. Hill,** 50 S. Ct. 451; 281 U. S. 673:

"It is true that the Courts of the States have the supreme power to interpret and declare the written and unwritten laws of the state; that this court's power to review decisions of the state courts is limited to their decision on federal questions, and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this court."

In **Highland Farms Dairy, Inc., et als. v. Agnew, et als.,** 57 S. Ct. 549; 300 U. S. 308, this Court at page 552 said:

"A judgment of the highest court of a state as to the meaning and effect of its own constitution is decisive and controlling everywhere."

Also at page 551:

"The statute challenged as invalid is one adopted by the state. This removes objections that might be worthy of consideration if we were dealing with an act of Congress. How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself. Nothing

in the distribution here attempted supplies the basis for an exception. The Statute is not a denial of a republican form of government. Constitution, Article 4, Section 4, even if it were, the enforcement of that guarantee, according to the settled doctrine, is for Congress, not the Courts."

CONCLUSION.

Thus, it is insisted by counsel for respondents that the petition shows upon its face that this matter is not a proper case for the granting of certiorari; that no federal question of substance has been presented at anytime during the state proceedings and not sufficiently raised in the petition for certiorari; that the whole matter is simply that the Supreme Court of Tennessee in its construction of the State Statute in question held contrary to Petitioner's contention and Petitioner would now ask this Honorable Court to construe the State Statute. Respondents insist however that this Honorable Court would by its own decision look to the construction placed upon the matter by the Supreme Court of Tennessee and finding no federal question involved, would dismiss the petition.

Respectfully submitted,

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A. D. LINDSEY,
Lawrenceburg, Tennessee,

.....

NOBLE L. FREEMON, SR.,
Lawrenceburg, Tennessee,
Counsel for Respondents,
Atlas Perry, et als.

Certificate of Service.

I the undersigned hereby certify that I forwarded a true copy of the within answer to petition for Writ of

Certiorari to J. P. Kimbrell, Petitioner, West Point, Tennessee 38486, on this 7th day of June, 1967.

A. D. Lindsey,
Counsel for Respondents.